

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : **10/711,477**
Filed : September 21, 2004
Patent No. : **7,521,387 B2**
Issued : April 21, 2009

Applicant : Liang A. Xue et al.
Title : Alkali-Free Composite Sealant Materials for
Solid Oxide Fuel Cells

Confirmation No. : 5476
TC/AU : 1793
Examiner : Noah S. Wiese

Docket No. : 19441-0072
Customer No. : 29052

**APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)**

Via EFS-Web

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment indicated in U.S. Patent No. 7,521,387 B2, issued April 21, 2009.

The Commissioner is authorized to charge the fee of \$200.00 required under 37 C.F.R. § 1.18(e) to Deposit Account 19-2059.

According to the referenced patent, the Patent Office has calculated that the Patent Term Adjustment under 35 U.S.C. § 154(b) is 912 days. Applicants submit that this determination is incorrect. The correct Patent Term Adjustment is **1267 days**, as explained below.

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The Patent Term Adjustment History available on the Patent Application Information Retrieval System (PAIR) shows, in pertinent part, an USPTO delay in the amount of 933 days, calculated from the first Office Action mailed June 11, 2008, and the application filing date on September 21, 2004 (“A delay”). Applicants submit that the USPTO delay should also include delay calculated from the issue date, on April 21, 2009, and 3 years from the application filing date, September 21, 2004, (“B delay”) that does not overlap the A delay, in the amount of 314 days (i.e., 578 days of B delay – 254 days of overlap of A delay and B delay = 314 days). Under 35 U.S.C. § 154(b)(1)(B), USPTO delay occurs if the issue of an original patent is delayed due to the failure of the Patent Office to issue a patent within 3 years after the actual filing date of the application in the United States (i.e., “B delay”). See *Wyeth v. Dudas*, 2008 U.S. Dist. LEXIS 76063, 88 U.S.P.Q.2D (BNA) 1538 (D.C.C. 2008) (“Periods of delay that fit under [35 U.S.C. § 154(b)(1)(A)] are called ‘A delays’ The period that begins after the three-year window has closed is referred to as the ‘B delay’ If an ‘A delay’ occurs on one calendar day and a ‘B delay occurs on another, they do not overlap and § 154(b)(2)(A) does not limit the extension to one day.”). Accordingly, the omission of the patent term adjustment of 314 days was made in error and should be added back to the patent term adjustment.

The Patent Term Adjustment History available on PAIR shows, in pertinent part, an Applicant delay in the amount of 21 days calculated from the mailing date of the Response to the Amendment under 37 C.F.R. § 1.312, February 26, 2009, and the filing date of the Amendment

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under 37 C.F.R. § 1.312 on February 6, 2009. Applicants submit that the Amendment under 37 C.F.R. § 1.312 was attributed to the USPTO and not Applicants and therefore is USPTO delay. The Amendment under 37 C.F.R. § 1.312 corrected an obvious error introduced by the Examiner's Amendment, mailed January 9, 2009. The Amendment under 37 C.F.R. § 1.312 was filed within a reasonable time after receipt of the Examiner's Amendment and indication from the Examiner, in a phone call on February 2, 2009 with the undersigned, that the obvious error could only be corrected by Amendment under 37 C.F.R. § 1.312. In addition, the delay in the amount of 21 days calculated from the mailing date of the Response to the Amendment under 37 C.F.R. § 1.312, February 26, 2009, and the filing date of the Amendment under 37 C.F.R. § 1.312 on February 6, 2009, is incorrect. The correct patent term adjustment for this period of delay should be 20 days. As such, the USPTO delay should include the 20 day period calculated from the mailing date of the Response to the Amendment under 37 C.F.R. § 1.312, February 26, 2009, and the filing date of the Amendment under 37 C.F.R. § 1.312 on February 6, 2009.

The application is not subject to a terminal disclaimer. Therefore, Applicants calculate from these adjustments and delays (933+314+20) that the Determination of Patent Term Adjustment should be **1267 days**.


Alternatively, if the period calculated from the mailing date of the Response to the Amendment under 37 C.F.R. § 1.312, February 26, 2009, and the filing date of the Amendment

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under 37 C.F.R. § 1.312 on February 6, 2009, is found to be Applicant delay, the correct patent term adjustment for this period of Applicants' delay should be 20 days, as the calculation of 21 days of delay for this period in PAIR is incorrect. In this alternative situation, Applicants calculate from these adjustments and delays (933+314-20) that the Determination of Patent Term Adjustment should be 1227 days.

Applicants hereby notify the Office of this apparent error in the Patent Term Adjustment indicated in U.S. Patent No. 7,521,387 B2, issued April 21, 2009, and respectfully request indication of a corrected Patent Term Adjustment on the referenced patent. This apparent error could not have been raised in a request for reconsideration of patent term adjustment indicated in the notice of allowance, as the referenced patent had not yet issued and the actual issue date was not known. The foregoing is believed to be a full and complete Application for Patent Term Adjustment under 37 C.F.R. § 1.705.

Respectfully submitted,

By: 
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